# ORDER WITHOUT LAW:
# WHERE WILL ANARCHISTS KEEP THE MADMEN?

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As every honest man knows, crime doesn't pay. Our main problem is that apparently no one has yet told the criminals. Crime is our number one growth industry, and currently exhibits such bullish prospects that its present competitor seems content to merely slow its rate of growth. Thus the government would have us rejoice that the alligator is eating us slowly. Such a tremendous achievement with the second derivative of the crime wave should be promptly rewarded by throwing the rascals out. It is time to look at alternatives to our current system, rather than to debate further over who sails the slower boat to Hell.

The immediately obvious alternative to State monopoly in the crime and punishment area is a system based on the antithetical social system--anarchy. Thus we are faced with the question, "Where will anarchists keep the madmen?" How will we be protected from criminality in an order without law? If we can answer these questions plausibly and palatably, we will then possess an alternative to the current chaos which prevails under the rule of the State.

Once the State law-enforcement monopoly is destroyed, and the inadequate State protection of person and property is no longer forced upon us, each ex-citizen will have the opportunity to consume protection services according to his own tastes and preferences. If he is a risk-lover, he may reduce his expenditures on protection services far below that level which he was forced to pay implicitly through taxation. If

I am indebted to Dr. William Breit for his numerous suggestions and criticisms which have helped me greatly in the development of these topics.

the risk-lover's estimate of the risk he faces and the competitive market's estimate are the same, he will even demand no protection services at all! However, most people exhibit risk-averse behavior, particularly when faced with large-loss, small-payoff risks. Since non-purchase of protection services can be thought of as such a risk, we thus expect risk-averse persons to exhibit an effective demand for protection services.

As in any other industry, there will be specialization on the basis of the economies to be derived from the division of labor. Each consumer will balance his purchases of protection services relative to self-supplied defense so as to maximize his utility. For example, many purchasers of personal and property defense will keep a gun in their homes in order to deal with situations where delayed action by a specialist is useless or less preferred than immediate, though more risky, action by a non-specialist.

Under rationality and profit-maximization assumptions, specialists would organize in units of the optimal firm size, which would depend not only on technological considerations but on the structure of the demand faced by the firm. Demand would be inversely related to firm size above some range, due to the wariness of an anarchist populace of incipient coercive monopoly, which would negate the anarchistic social order by *de facto* forming a State, and necessitating another revolution. This could even be translated to a quasi-technological consideration, by noting that too great a concentration of power will lead to a debasement of defense services and a tendency to coercive behavior. Thus the market will regulate the size of these firms, which we will

call defenders, or defense companies.

These defenders will compete, regardless of whether they are organized along capitalist or communist lines. There would exist a competition between these two and other economic lifestyles. This would be reflected by commercial competition between producing units organized in accordance with differing economic theories. Capitalist and communist bakeries, shoemakers, and defenders will all be thrown into the competitive arena in search of customers.

It is important to note here that a competitive social system does not imply capitalism or deny communism. Indeed, it would be most un-anarchistic to deny to communism or capitalism or any other theory the opportunity to compete as economic systems. Many anarcho-capitalists and anarcho-communists, though, mistakenly assign the ills of society to the particular economic system, when the real problem is that one or the other system is nominally enforced or heavily supported, and invariably perverted beyond recognition, by the State, a monopoly, and that this State enforces a system of property rights that would not prevail in an anarchy. Capitalism and communism as pure economic systems, as production schemes agreed to by the participants without coercion, with free transfer from one system to the other in one or all facets of one's consumption or production activities, will be tolerated by every true anarchist. The function of the anarchist is not to dictate an economic system; it is to destroy the State in order to allow all economic systems to compete on a voluntary basis.

I emphasize this point, first, because our more narrow-minded anarchists have traditionally fallen into irrelevant arguments in this

area, and, second, because I want it to be perfectly clear that my subsequent analysis, though it is couched in free-market terms, does not indicate a preference on my part for one economic system or another.

The differences in individual firm structures will obviously follow client preferences for protection supplied by the various types of firms. Regardless of the theme of their internal organization, the firms will compete on the open market, via both money or labor based price competition and competition between the various economic lifestyles per se.

The individual company will supply protection and enforcement services directed at the defense of its clients and their property. The company is free to decide which criteria it would follow in defining property, but competitive pressures would exist inducing the company to move toward whatever property system predominates after the initial re-distribution and expropriation accompanying the demise of the State. Each company would define its own enforcement area, but competitive pressures as outlined later will induce the company to adopt an enforcement area calculated to minimize non-productive strife and maximize profit. Given some system of land tenancy (as well as water and air tenancy), the company's enforcement area might include the geographical area defined by its clients' land, and the clients' persons and mobile property regardless of geographical location. I do not propose to force this definition on anyone, but conjecture that the competitive solution would approximate such a definition for most firms.

It is irrelevant to us whether the company peddles a uniform protection service over its entire enforcement area or caters to special enforcement demands. All conflicts among clients of the same company

would be settled internally by the company, regardless of congruence or lack of it between the codes enforced under the conflicting parties' contracts. Conflicts involving clients of different companies are handled independently of the spectrum of codes enforced by either company. The code that each client engages the company to enforce can be thought of as the code of the company, in all cases involving that client, without loss of generality. We must logically examine only the case of conflict between clients of different companies, the codes concerned being different by assumption.

Postponing the more critical questions here, let us assume, just for a moment, that the alleged offense is contrary to the codes of both parties' companies. We must resolve the problem of securing an arrest in an anarchy. Would the accused's company allow the plaintiff's company to arrest or detain its client, and what would be the accused's company's response to an arrest already accomplished?

It is obvious that defense companies will anticipate such problems, and establish a policy for such situations. It will be competitively essential to allow the arrest of one's own client, under qualifying circumstances enumerated later. Any company which refused to allow another company, acting in presumed good faith and with presumed good cause, to arrest their clients would suffer in several ways.

First, and most obvious, is that the other companies will likewise contest any attempt by the offending company to arrest their clients. The offending company will then either be powerless to protect its clients against the opposing companies' clients, or it will be forced into a violent confrontation with other companies. Continued involvement

in such frays without excellent, and publicized, reasons will drive away one's most risk-averse clients, as would the other alternative, reciprocal impotence.

Second, inasmuch as criminals tend to migrate somewhat due to the unstable nature of their "trade", every defense company will find it vital to maintain active working relationships with the other companies in the area. To effectively apprehend criminals, a co-operative information and apprehension network, or some sort of inter-company bounty system, will no doubt arise. Recalcitrance in handing over a suspect, or unreasonable actions taken to secure his return, will generally damage or destroy these essential working relationships.

Third, refusal to surrender a suspect would attract criminals seeking to secure contracts with the company. The company will thus be thrust into confrontations more and more often, and will gradually be destroyed.

In fact, a defense company will probably be quite diligent in the pursuit of its own clients who have violated other codes. If another company apprehends one's client and proves him guilty of a serious crime, there is always room for doubt as to whether one's company shelters criminals. It might even become a matter of courtesy to allow the accused's company to make the arrest themselves in many cases!

If a company believes its client to be innocent, it serves its own best interests by allowing the client to be arrested. This does not imply that the client will be abandoned. The company could post bail for its client or arrange this with a bail bondsman. Such bail service would no doubt be demanded by the risk-averse as a hedge against the risk of erroneous arrest.

Even if the company believes its client guilty, the same pressures compel it to allow his arrest. In a competitive situation, refusal will entail risks of a higher order than any risk or loss they might suffer as a result of the guilt of their client. In addition to the previously stated incentives to co-operate, we must consider that if the company feels that its client is guilty, then there exists information supporting that conclusion, which, if not public knowledge, may at any time be made public through an information leak. Thus the company not only alienates itself from commercial relationships by its refusal, but may risk having all belief in its good faith shattered by information leaked by an employee acting either out of his own moral convictions or for money.

Anticipation of such conflicts will generally lead to formal procedures agreed to by most companies in a given area concerning the limits of reciprocal powers of arrest. Similar "treaties" will develop to define procedure in several other areas as well, assuming that the companies possess some small degree of foresight, an assumption implicitly denied by most critics of anarchism.

This system will benefit the accused criminal in several ways. The likelihood that he will be mistreated will be minimized. Today's barbaric legal system can hold a man in a cage unfit for animals for months without bringing him to trial, closing its eye to perversions and racketeering, and winking that eye at the brutal sadism of some of its employees, solely by virtue of its monopoly position. No force comparable to that wielded by the government can be exercised today in defense of the accused or convicted. In an anarchy, the accused would

have access to an agency with powers on the same order as the arresting company, which would take a direct interest in his welfare. Further, if a company has a reputation for abusing prisoners, other companies will thus be provided with a legitimate ground for preventing the arrest of their clients, and will be able to thwart the offending company's enforcement efforts without the loss of respect and working relationships that non-co-operation would generally entail. The only sound position competitively is for the company to be able to point to its humane treatment of prisoners to prove to all that the innocent have nothing to fear from them, and therefore that any company refusing to allow them power to arrest must be harboring a man it knows to be guilty.

The availability of bail would be determined by the competitive mechanism. No longer would arbitrarily high bail be set by bigoted, venal, or politically-motivated agents of a monopoly. A profit-maximizing arresting company would at most demand a bail which would allow it to make a satisfactory settlement to the victim or his heirs, cover all costs incurred in the case, and provide them with a satisfactory profit. It is then a minor concern to them if the defendant does not show up at a hearing or if the other company can not be brought to the negotiating table.

It would then fall upon the accused's own defense company to supervise him while he is on bail. At its option, and if the accused agrees either at the outset of his contract or as a precondition for bail, the defense company may decide to confine its own client. This would be an internal matter involving voluntary contract and presents us with no problem.

The accused would also, for the first time in history, regularly have investigative agencies working on his behalf which wield powers on the same order as those of the arresting company. Deliberate as well as accidental conviction of the innocent will be far less feasible. Falsification of evidence will be considerably more risky, and would entail not just minor political embarassment, as today, when disclosed, but would entail the destruction of the offender. The current disadvantage imposed on the accused today by the practice of the government police of pursuing only leads which tend to strengthen their case while ignoring evidence of innocence would be eliminated. Only a competitive system can insure impartiality.

Having now laid a framework for further analysis, let us drop our earlier assumption that the alleged offense be prohibited by the codes of both companies involved. We will now deal with cases in which an offense is alleged to have been committed by a person whose own defense company enforces no prohibition of that particular act over the accused. Obviously, many such acts will be quite minor, and profitable to prosecute only if repeatedly committed. In such instances, the first offense will often be punished by merely a warning to the offender and/or his defense company, or by expulsion or banishment for a period of time of the offender from the accusing company's enforcement area. The accused's defense company will generally not be involved, unless there is a disputation of fact. We will not consider such minor problems here, for the accused is not deprived of property or liberty, beyond that liberty lost as a result of another's exercising his own liberty to ban the offender from his land. Let us consider a more serious case.

Utilizing the renowned capacities of the economist for unlikely assumptions, I will posit that those of us here today might, in an anarchy, form a defense company on a joint stock basis. Let us further assume that one tenet of our code is that information and the judicious withholding of information are economic goods and that trade in these goods ought not be prohibited. In simpler terms, we do not recognize blackmail (as distinct from extortion) to be a crime. So long as we only peddle silence to each other, we run afoul of no other companies. However, suppose one of our brasher young members attempts to blackmail a person not sharing our free trade philosophy. We will then face a conflict with this person's defense company.

Our response is solely a matter to be determined by our own preferences. It may be understood among us that in such a situation we will only provide counsel and normal investigative resources to the offender, and allow him to be judged under the provisions of the arresting company's code. This path may be distinctly advisable when one's code differs substantially from the bulk of the codes in the area. Anarchy merely facilitates living as one wishes with minimal interference; it cannot guarantee one the freedom to impose his ideas upon others, and it cannot protect one against an overwhelmingly superior force which one has antagonized by attempting such an imposition.

Another recourse is to negotiate for our associate's release. This will generally afford good prospects for success, because profit-maximizing companies will push for a monetary penalty for most offenses. A profit-maximizer will usually have no interest in incarceration per se,

but would advocate it largely to insure the eventual restoration of monetary value to its clients, under a mechanism to be described later. Such a monetary penalty affords a convenient base upon which the arresting company may justify its charges, or its share of the settlement to the client. Failing such settlement, though, we are left to the previous option of allowing our associate's judgment on the company's code or some compromise criterion, or on re-taking our associate by force.

A decision to re-take the prisoner by force would entail relatively great expense and risk. Against the cost of recovering our man, we must balance the seriousness of the penalties likely to be imposed upon the offender, and the potential loss of clients or members if we take no action. We also consider the degree of support that we can expect from other companies, and our chances of eventual success. Obviously, in the case we have assumed, we will have virtually no support from other companies, our chances of success are virtually zero, inasmuch as many other companies may combine against us, and potential loss of members is small for we are all enlightened and realize the folly of forceful action in this case.

However, if one of us were visiting Southern California, and inadvertantly violated the Holy Shrine of Ishtar while searching for a water fountain or pursuing one's own innocuous path, and if the Ishtar-worshippers felt that this meritted the death penalty, the situation would be reversed. The penalty is now unreasonable, support from other companies will now be more easily obtained, and we stand to lose many of our members through inaction. We either seize our client

by force, or, if his execution is not imminent, demand and receive, by virtue of the superior force at our disposal, his release with only a warning, a fine, or some reasonable penalty.

Thus we see that, under an essentially profit-maximizing strategy, a defense company is led to allow other codes to be enforced over its clients when they are in other enforcement areas, so long as the code seems reasonable or their client consents to be subject to it. Codes differing in the extreme from the bulk of codes enforced in a given region would be able to function as a means of resolving conflicts among their adherents, but would be limited in their ability to effectively restrict non-adherents. The penalty extractable from a person who violates an extremely non-standard code would vary, depending upon the clarity and extent of the public dissemination of the restrictions, and the likelihood that the offense was not perpetrated deliberately in direct defiance of the code.

There would not and could not be any uniform code in an anarchy, unless we secured unanimous consent from hundreds of millions of persons, which is rather unlikely. There would, however, be a tendency for codes to standardize, especially in minor detail, due to considerations of transactions costs and the costs of maintaining a stock of knowledge of other codes. Difference in codes would persist only in those areas where the demand for non-standard enforcement overrides the economies of standardization. These areas would consist largely of enforcement demands based upon moral and religious convictions, which, while not irrational, can be classed as non-rational and not subject to profit-maximization behavioral assumptions. Thus, a substantial move toward standardization

would occur in the treatment of crimes of violence and infractions of commercial codes, while diversity would persist in the demand for mores-enforcement. It would in general be profitable for the company to expend some capital to increase the awareness of non-clients with reference to code differences, in the anticipation that the number of offenses, and with it the difficulty of maintaining a non-standard code, would decrease.

Thus we have a brief sketch of the structure of a non-monopolized defense industry. The actual process of judging the alleged offender and enforcing a penalty can now be derived along similarly voluntaristic lines.

The judging mechanism would be arranged by mutual agreement among the companies and individuals involved. Inasmuch as either the offender or a substantial bail would be held by the arresting company, there are strong inducements for the defending company to act in good faith and settle the dispute as quickly as possible.

In most disputations of guilt or innocence, and in some cases of negotiation of a penalty to assessed in penance for an admitted offense, it would serve both companies' interests to employ an impartial arbitrator. Arbitration would cut time and expense associated with negotiation, especially if both parties are convinced of the merits of their case, and the company would often be able to avoid being directly blamed for a settlement unfavorable or unsatisfactory to its client.

The arbitrator would be employed to end disputes. To that end, he may demand the right to enforce, and be paid for enforcing, his decision. In such a case, the arbitrator would himself employ yet another defender.

The arbitrator need not be selected anew with each case. Several companies may agree in advance of any conflict among them to employ one arbitrator in all cases of a given type that arise among them. The arbitrator thus becomes a tribunal of last resort under an agreement which any company may exit from, assuming there is no case in progress.

The rules of evidence could be set either by the companies through mutual agreement, or by the arbitrator. These rules would tend to standardize quickly in minor detail, of course, although the admissibility and weight given to tape recordings, hearsay, polygraph, and other types of inconclusive yet often investigatively useful evidence, and other questions of this order of magnitude would probably not be solved to all companies' satisfaction. In the absence of agreement between the companies as to rules of evidence or procedure, the arbitrator would generally settle that dispute also, and in effect set his own rules.

The arbitrator then decides the guilt or innocence of the accused, and determines a penalty. If the accused is acquitted, the penalty falls upon the arresting company, and would involve compensation of the accused for his inconvenience, the size of the penalty depending upon the degree of the estimated inconvenience, and on the certainty with which the arbitrator pronounces him innocent. If the accused is found guilty, the penalty falls on him or his defense company, as arranged, and would involve restitution to the victim or his heirs, to whatever extent possible, of the value lost by the victim, plus payment to the arresting company for expenses incurred in the arrest, confinement, and prosecution of the accused, plus profit.

Two obvious alternatives present themselves at this point: Either

the convict is able to pay off his judgment, or the burden falls on his defense, which then arranges with the convict a scheme of repayment of the judgment to the company. In the former case, if the judgment did not require that the convict be confined, or pay his judgment from earnings from a penal agency as outlined below, then the convict will have literally paid his debt to the ones he has injured, and the case is closed, so far as we are concerned.

In the latter case, though, what options does the company have? They could allow the convict to work out his judgment at his previous occupation, under varying degrees of security and supervision ranging from probationary to work-release schemes. The determining factor here is the company's willingness to assume risk. If the company is unwilling to take a risk on the client, then penal specialists will be employed.

Several penal specialists would be invited to make offers of employment under security conditions to the convict, who would be free to accept any offer which would allow him to settle his debt to his defense company. The convict could quit at any time and be remanded to the custody of his defense company. Thus he would be assured mobility, and would therefore receive a competitive gross wage equal to his marginal product. From this wage would be deducted the penal agency's overhead for security provisions plus profit, and the agreed repayment of his defense company. He would remain free to spend the remainder of his wage as he sees fit. His mobility would preclude penal brutality.

Alternatively, the penal agency may be willing to assume the risk of not being able to get the convict to produce, and so purchasing the convict's debt from the defense company, with the convict's consent, and then

arranging repayment with the convict. In such a situation the convict would generally retain a defense company, perhaps the same company, to assure him of mobility by standing ready to repay his unretired debt and so terminate his arrangement with that particular penal agency if the convict so desired. This likewise would preclude penal brutality.

Such a system has several distinct advantages over our present prison system. If we assure mobility and a competitive gross wage, then the effort expended by the convict is directly rewarded with a shorter period of confinement or probation. He would have an objective yardstick by which he could measure his progress. The present parole system administered by often corrupt, bigoted, or politically minded minor bureaucrats would finally be put to death. Prisoner morale would improve, making eventual rehabilitation easier.

As an extension of this point, the convict would be shown directly the value of education. If he committed his particular offense primarily because he had no trade, he will find it to his advantage to learn one. The penal agency may supply education on a profit-making basis, or allow profit-seeking educators to do business within their walls. Thus the convict would have a better chance of returning to a normal life when he regains his freedom.

The penal colony would also generally continue employment of the convict after he has retired his debt. It would be foolish to in effect fire a worker with experience simply because he has now regained his freedom. He will still remain employed by the penal agency but will become free of security restrictions and will be an ordinary worker.

Indeed, an agency which does provide employment for "graduated" convicts would have a strong competitive edge in the recruitment process.

The convict will have a direct incentive to exhibit good behavior. The better risk he appears to the penal agency, the more likely he is to be allowed parole or other freedoms in the interest of increasing his productivity. Good behavior will be rewarded monetarily also, reflecting such declines in marginal cost of security provision as reduced wear and depreciation of guards.

Finally, the agency would be responsive to the demands of the convicts, for they are mobile employees, and thus not literally prisoners. Thus, with whatever net wage they keep after making their agreed-upon payment to the penal agency or defense company, the convict would be allowed to purchase goods from the non-prison main economy, subject naturally to security constraints, thereby eliminating the current extortion and black marketing rampant in our prisons. Visitors and mail would no longer be arbitrarily cut off. Conjugal visits, or in some cases the moving of one's family into the prison, would be allowed. Our analog to prison would not be, as today, a brutal institution primarily functioning to teach brutes how to be more brutish, but would become almost a treatment center, a place to learn how to live peaceably in outside society. Our present system only teaches a person how to live in prison.

Thus I have outlined, as far as time permits, a competitive, free-market defense system. This is by no means, though, the only way that an anarchy might be organized; I hold simply that such a structure will be likely to emerge from a competitive free-market environment.

Such a market structure is amenable to organization under capitalist, communist, or any voluntary scheme of economic organization. It allows the greatest freedom for the greatest number, so that they may pursue the greatest good as they see it. Even where it restricts freedom, the anarchist system teaches the temporarily unfree to live at peace in a free society.

From a macroeconomic standpoint, the anarchist system will be a radical improvement over the current system. So-called "crimes without victims" would no longer be prosecuted as crimes, and the serious crime currently stemming from monopolies in the various vice trades would be eliminated. More first offenders would be educated and rehabilitated than under the present system, and there would be direct profit incentives to keep youthful, casual offenders away from hardened criminals. The forced restitution under the anarchist system may convince some that crime indeed does not pay. Greatly reduced resources allocated to the defense industry will release capital and labor to be employed elsewhere, and the elimination of the State bureaucracy will lift a great dead weight from all entrepreneurs, capitalist or communal alike. A thus rapidly expanding economy should alleviate poverty to some extent, as would the re-distribution of government assets. This would tend to depress criminal behavior. Finally, the performance of competitive suppliers of defense should easily out-perform the old State monopoly, providing a superior product at a lower price in a free market.

We are faced with a classical choice: monopoly or competition? As the monopolies in other markets were found to be intolerable, soon

the monopoly on the defense industry, the State, will be found to be intolerable. There is an alternative to the State system; an order without law, a truly free society, and that society is anarchy.